

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**AMPERSAND PUBLISHING, LLC d/b/a
Santa Barbara News-Press**

and

**GRAPHIC COMMUNICATIONS
CONFERENCE, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

**Cases 31-CA-028589
31-CA-028661
31-CA-028667
31-CA-028700
31-CA-028733
31-CA-028734
31-CA-028738
31-CA-028799
31-CA-028889
31-CA-028890
31-CA-028944
31-CA-029032
31-CA-029076
31-CA-029099
31-CA-029124**

**CHARGING PARTY’S OPPOSITION TO RESPONDENT’S REQUEST FOR
POSTPONEMENT OF COMPLIANCE HEARING**

Charging Party Graphics Communications Conference of the International Brotherhood of Teamsters (“GCC/IBT” or “Union”) hereby opposes Respondent’s request for a postponement of the December 10, 2019 compliance hearing for the following reasons:

1. This proceeding is intended to provide for the calculation of damages for substantial finally established Respondent liability ordered by the District of Columbia Circuit in March 2017, some 32 months ago. The multiple ULP charges that originated this matter were first filed in 2008, adjudicated by an ALJ in 2009 with a ruling in 2010, and became final at the Board level in 2015. The dozens of employees who are victims of this Respondent’s multiple violations of the NLRA (and the union as well) should not be required to wait any longer than absolutely necessary to finally receive the remedies for which they have waited for over a decade, which in accordance with the Board’s summary judgment ruling already amount to well

in excess of \$1 million, with likely another \$1,000,000 due and owing (and with more unfair labor practices still to be litigated).

2. The original specification that commenced this compliance proceeding has been in Respondent's possession for over a year.

3. There have been several postponements of this hearing. The December 10 hearing date has been known to Respondent since September 5, 2019, yet Respondent waited until November 25 – two weeks before the hearing – to accumulate alleged conflicts and request a postponement. Respondent's counsel asserts that he was not aware of the duration of the hearing until the November 21 conference call with ALJ Montemayor, but he does not assert that he made any effort to learn that information prior to that occasion. More significantly, Respondent's counsel does not state when he allegedly committed to any of the alleged conflicting dates noted in its postponement request. Furthermore, it is not clear that the alleged "obligations" Respondent's counsel states that he "has" are actually his personal obligations. In that regard, counsel is billed on his firm's website as the Chair of its Litigation Department¹ that boasts 13 lawyers under his wing in that department. The website lists a total of 42 lawyers at the firm.

4. Most of the alleged conflicting "obligations" occur well before the December 10 hearing, and thus do not pose genuine "conflicts" with the instant hearing. Notably, Respondent's counsel does not explain why or when he arranged to fly *from New York* to (presumably) Los Angeles *on the very first day of the hearing in this matter*. He does not state the time of the hearing in the December 9 *Borden v. TPG* matter, or why he decided not to depart New York that same day instead of the next to arrive in time for the hearing in this matter. Nor

¹ <https://www.eisnerlaw.com/practice-focus/litigation/>

does he offer any case numbers or accounts of the courts or other fora in which the listed matters are being adjudicated. Nor does counsel explain how, why or when the depositions noted to be taken December 12 and 13 were scheduled to conflict with the December 10 hearing week, and why they cannot be postponed or handled by another lawyer. Indeed, counsel's concession that he was unaware of the duration of this compliance proceeding suggests that the "Únion Patriot" depositions were scheduled *after* September 5. Yet he made no inquiry about the length of the instant proceeding until November 21.

5. All of the GC's and Union's witnesses are available to testify in accordance with Board procedures the week of December 10th. The Respondent should not be rewarded for failing to either prepare, or to find a lawyer with a calendar cleared for the hearing dates. See, e.g., *Int'l Union of Operating Engineers, Local No. 501 v. NLRB*, 1989 U.S. App. LEXIS 23243 (9th Cir. June 26, 1989)("The ALJ had no duty to grant further continuances to unprepared parties, and he had to be fair to [Respondent] Holiday Gifts, who was prepared to proceed.")


6. "Postponements of proceedings are not a matter of right; rather, they are to be either granted or denied upon consideration of the inconvenience and possible unfairness to other affected parties as against a claimed hardship of the party making the request (*N.L.R.B.*) v. *Hijos de Ricardo Vela, Inc.*, 475 F.2d 58, 61 (C.A. 1, 1973), enf'g 194 NLRB 377 (1971); *N.L.R.B. v. Air Control products, Inc.*, 335 F.2d 245, 248 (C.A. 5, 1964)), while keeping in mind that these proceedings must proceed with "the utmost dispatch." *N.L.R.B. v. American Potash & Chemical Corp.*, 98 F.2d 488, 492 (C.A. 9, 1938)², cert. denied, 306 U.S. 643; *N.L.R.B. v. Glacier Packing*

² As the Court elaborated in that case, "The Act makes it clear that the proceedings must proceed with the utmost dispatch. When the Company received the complaint and notice of trial and chose the particular firm of lawyers to represent it, it should have secured one of their staff of attorneys or some other counsel who was free from other engagements to undertake the case with the instant attention contemplated by the Congress." 98 F.2d at 492. Respondent has not suffered

Co., Inc., 507 F.2d 415, 416 (C.A. 9, 1974)³. Unless a postponement or continuance is improperly refused, it is not a denial of due process for the Board to conduct its hearing without the presence of a respondent or his representative. *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 25, 47 (1937); *N.L.R.B. v. American Potash & Chemical Corp.*, *supra*; *N.L.R.B. v. Glacier Packing Co., Inc.*, *supra*; *Spiegel Trucking Company* 225 NLRB 178, 179 (1976), *aff'd* 559 F.2d 188 (C.A. D.C., 1977).” *Jacques SYL Knitwear, Inc.* , 247 N.L.R.B. 1525, 1529-1530 (1980).

The injured parties in this case have waited long enough, and Respondent has not adequately explained why this proceeding should not go forward as scheduled. The ALJ should deny Respondent’s request for a postponement, and should order the hearing go forward on December 10 and consecutive days thereafter until completed.

Dated this 26th day of November, 2019.

By: 

IRA L. GOTTLIEB
BUSH GOTTLIEB, a Law Corporation
Attorneys for Graphic Communications
Conference, International Brotherhood of
Teamsters

a shortage of attorneys throughout its lengthy history of unfair labor practice litigation, deploying literally dozens of lawyers from numerous law firms over that span.

³ In *Glacier*, the Court of Appeals upheld a denial of continuance when counsel seeking the continuance was aware of potential conflicts one and a half months before the NLRB hearing.

PROOF OF SERVICE

**AMPERSAND PUBLISHING, LLC d/b/a Santa Barbara News-Press
and
GRAPHIC COMMUNICATIONS CONFERENCE, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

Cases:

31-CA-028589	31-CA-028734	31-CA-028944
31-CA-028661	31-CA-028738	31-CA-029032
31-CA-028667	31-CA-028799	31-CA-029076
31-CA-028700	31-CA-028889	31-CA-029099
31-CA-028733	31-CA-028890	31-CA-029124

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 801 North Brand Boulevard, Suite 950, Glendale, CA 91203-1260.

On November 26, 2019, I served true copies of the following document(s) described as **CHARGING PARTY'S OPPOSITION TO RESPONDENT'S REQUEST FOR POSTPONEMENT OF COMPLIANCE HEARING** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Bush Gottlieb's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address akennedy@bushgottlieb.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 26, 2019, at Glendale, California.



Ashlie Kennedy

SERVICE LIST

Yolanda Apodaca, Dir. HR
Santa Barbara News – Press
715 Anacapa St.
Santa Barbara, CA 93101-2203
E-Mail: yapodaca@newspress.com

By E-Mail and U.S. Mail

Nick Masuda, Dir. of News Operations
Santa Barbara News – Press
715 Anacapa St.
Santa Barbara, CA 93101-2203
E-Mail: masuda@newspress.com

By E-Mail and U.S. Mail

Michael Eisner, Esq.
Eisner, LLP
9601 Wilshire Blvd., 7th Floor
Beverly Hills, CA 90210-5211
E-Mail: meisner@eisnerlaw.com

By E-Mail and U.S. Mail

San Francisco, CA Division of Judges
901 Market Street. Suite 300
San Francisco, CA 94103-1179

By U.S. Mail Only

Christopher Frost, Esq.
Eisner, LLP
9601 Wilshire Blvd., 7th Floor
Beverly Hills, CA 90210-5211
E-Mail: cfrost@eisnerlaw.com

By E-Mail and U.S. Mail

Nicholas Caruso
Graphic Communications Conference IBT
315 Jewell Ln.
South Saint Paul, MN 55075
E-Mail: ncaruso@gciu.org

By E-Mail and U.S. Mail

Roxanne Rothschild, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

By U.S. Mail Only

Julia M. Durkin
Counsel for General Council
E-Mail: Julia.Durkin@nlrb.gov

By E-Mail only